



**Nanda Properties Limited v Mudher & another; Muchendu t/a Icon  
Auctioneers (Interested Party) (Miscellaneous Application E596 of 2019)  
[2025] KEHC 8801 (KLR) (Commercial and Tax) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8801 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E596 OF 2019  
JWW MONG'ARE, J  
JUNE 18, 2025**

**BETWEEN**

**NANDA PROPERTIES LIMITED ..... APPLICANT**

**AND**

**AMREEK SINGH MUDHER ..... 1<sup>ST</sup> RESPONDENT**

**NILESH JAYANTILAL KOTEDIA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JEREMIAH KIARIE MUCHENDU T/A ICON AUCTIONEERS .... INTERESTED  
PARTY**

**RULING**

**Introduction and Background**

1. The Interested Party("the Auctioneer") has filed the Notice of Motion dated 17<sup>th</sup> November 2023 seeking police assistance to break into the premises occupied by the 1<sup>st</sup> Respondent(Amreek) in Uchumi Estate, Gate 34A, Uchumi Road, South C in Nairobi County in order to maintain law and order and enable the Auctioneer remove attached movable goods/assets and issue a Notification of Sale for purposes of auctioning to recover the decretal amount totalling Kshs. 19,715,199.07 plus other incidental costs of the attachment. The Auctioneer also seeks the assistance of the officer commanding Akila Police Station or an officer under his command in the rank of Assistant Inspector to maintain law and order. The Applicant ("Nanda Properties") has also filed a Notice to Show Cause (NTSC) against the Respondents dated 17<sup>th</sup> November 2023 which seeks their arrest and committal to civil jail for failing to settle the decretal amount.



2. This application and NTSC are largely supported by grounds set out in the Auctioneer's affidavit sworn on 17<sup>th</sup> November 2023 and it has been responded to by Amreek through his Affidavit of Means sworn on 30<sup>th</sup> January 2024 and by the 2<sup>nd</sup> Respondent ("Nilesh") through his affidavit sworn on 17<sup>th</sup> April 2024. The parties supplemented their arguments by filing written submissions which are on record and I have considered the same and I will be making relevant references to in my analysis and determination below.

### **Analysis and Determination**

3. As stated above, Nanda Properties is seeking the arrest and committal to civil jail of Amreek and Nilesh due to their failure to settle a decretal amount of Kshs.19,715,119.07, which is owed to Nanda Properties pursuant to a decree dated 2<sup>nd</sup> August 2021. That despite three years having passed since the decree, they have not made any attempt to settle the award. In response, Amreek states that he is not in a financial position to pay the decretal amount all at once and that he previously offered to pay Kshs.200,000.00 per month towards his share of the debt through a letter dated 28<sup>th</sup> November 2022, but this proposal was declined by Nanda. He argues that committing him to civil jail would be a "drastic measure," especially since courts routinely allow judgment debtors to pay in installments. He cites the case of *Wanjiku & another v Attorney General & another; Muna & another (Interested Parties)* [2012] KEHC 5410 (KLR), which observed that committal to civil jail is a limitation of fundamental rights and freedoms, specifically the right to liberty, although such limitation is permissible with legislative safeguards under Article 24 of *the Constitution*. He further emphasizes that section 38 of the *Civil Procedure Act* and Order 22 rules 7, 31, 32, and 35 of the Civil Procedure Rules require that a judgment debtor be given an opportunity to show cause before being committed to prison. He submits that allowing him to pay by installments is in the interest of justice and would prevent him from destitution and eventual bankruptcy.
4. On his part, NILESH states that he is retired and has no source of income to sustain himself and that he lives with his son who provides him with financial support. He confirms that he does not own or possess any assets registered in his name, apart from 149 shares in Kenya Commercial Bank Ltd and 1,552 shares in Kenya Re Insurance Corporation Ltd, both of which have very low values. He depones that his only active bank account is with I&M Bank (Account Number 036\*\*2450) and that the monies deposited into this account are from various sources, including his son, relatives and friends and that these funds are provided to him for his day-to-day expenses. He states that on 1<sup>st</sup> March 2024, Kshs.1,000,000.00 was deposited into his account as a refund of a bond deposited at Milimani Court and that this money had been lent to him by a Mr. HS and was repaid to Mr. S on 4<sup>th</sup> March 2024. That on 8<sup>th</sup> March 2024, his son sold a motor vehicle (KCK \*N) for Kshs.1,180,000.00 which was deposited into the account by the buyer and that various payments were subsequently made on behalf of his son from this money
5. He depones that he is currently undergoing treatment for ill health, which has physically constrained him and prevented him from working and that his son, relatives, and friends are financing his ongoing tests and treatments. He argues that committing him to civil jail would be an "extreme measure" because his inability to pay is not deliberate; his financial means simply do not allow it. He reiterates that he has no personal resources to liquidate the decretal sum and prays that the court finds he has shown sufficient cause not to be arrested and committed to civil jail.
6. I have gone through the aforementioned arguments and considered the principles of justice, the right to liberty and Nanda Properties' right to recover its debts. Whereas Nanda Properties has stated that the Respondents have never attempted to satisfy the decree, the court notes from the record that there



have been previous attempts by the Respondents to settle the debt in installments and that they are still willing to pursue this route of settlement. I also find that the Respondents have shown sufficient cause that they should not be committed to civil jail as they are ready and willing to pay the decretal sum in installments, that they do not have the financial capacity to pay the decretal sum at once. NILESH has also demonstrated that he had limited assets with little value, he has explained the sources and reasons for the amounts received in his bank account and that he is of ill health. It has not been shown that the Respondents are likely to abscond or leave the court's jurisdiction with the object of obstructing execution and the Respondents have shown that they have not deliberately refused to settle the decree owing to their financial position.

7. As such, I am willing to offer the Respondents another chance to settle the decree in installments and I decline to commit them to civil jail as a mode of execution. I also find that the orders of breaking in are not warranted at this point unless and until it is shown that the Respondents have not offered or made any attempts to settle the decretal sums in installments.

### **Conclusion and Disposition**

8. In the foregoing, I dismiss the application and Notice to Show Cause dated 17<sup>th</sup> November 2023. The Respondents/Judgments Debtors are directed to come up with a payment plan in order to settle the decretal amount in periodic instalments within 30 days from the date of this Ruling. In default, execution by way of attachment to proceed. There is no order as to costs.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 18<sup>TH</sup> DAY OF JUNE 2025**

.....

**J.W.W. MONGARE**

**JUDGE**

In the presence of:-

1. Mr. Gakunga for the Plaintiffs /Decree Holder.
2. Ms. Zaynab holding brief for Mr. Savia for the 2<sup>nd</sup> Respondent.
3. Amos- Court Assistant

